

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

SHELLY R. MCCLANAHAN,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting  
Commissioner of the Social Security  
Administration,

Defendant.

CASE NO. 2:15-cv-00112 RBL JRC

REPORT AND RECOMMENDATION

NOTED: AUGUST 12, 2016

This matter has been referred to United States Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b)(1) and Local Magistrate Judge Rule MJR 4(a)(4), and as authorized by *Mathews, Secretary of H.E.W. v. Weber*, 423 U.S. 261, 271-72 (1976). Before the Court is plaintiff's motion for continuance (Dkt. 20).

Because plaintiff twice has failed to follow this Court's Orders, and because plaintiff has not availed herself of the opportunity to obtain an attorney in the generous amount of time already allowed, the Court recommends that plaintiff's motion for continuance (Dkt. 20) be

1 denied and that this matter be dismissed for failure to prosecute and for failure to follow this  
2 Court's orders.

### 3 **BACKGROUND**

4 Plaintiff filed this action early in 2015. Defendant filed her answer and the  
5 Administrative Record on December 29, 2015 (Dkt. 14). The Court issued the Order Setting  
6 Briefing Schedule on January 4, 2016 (*see* Dkt. 15). Plaintiff failed to follow this Court's Order  
7 by failing to file her Opening Brief on February 1, 2016 (*see id.*). Defendant filed a motion to  
8 dismiss on February 29, 2016 after plaintiff failed to file her Opening Brief (Dkt. 18). The Court  
9 ordered plaintiff to show cause by April 27, 2016 why this matter should not be dismissed for  
10 lack of prosecution (Dkt. 19).

11 On April 26, 2016, plaintiff filed a motion for continuance, requesting a 60-day  
12 continuance in her Social Security disability appeal in order to obtain counsel (Dkt. 20). The  
13 Court granted plaintiff's motion for continuance and ordered a new briefing schedule wherein  
14 plaintiff's Opening Brief was due on or before June 29, 2016 (Dkt. 21).

15 On June 30, 2016, one day after plaintiff's Opening Brief was due, plaintiff filed her  
16 second motion for a 60-day continuance, again in the hope of obtaining counsel within that time  
17 (Dkt. 22).

### 18 **DISCUSSION**

19 Plaintiff has had almost eighteen months to obtain counsel and has been unsuccessful.  
20 The Court twice has provided plaintiff with the briefing requirements with specific instructions  
21 on what should be included in the Opening Brief (*see* Dkts. 15, 21). In addition, when providing  
22 plaintiff with a continuance, the Court specifically informed plaintiff that any "motion[] to  
23 extend time or page limitations must be noted on the Court's calendar prior to the due date [June  
24

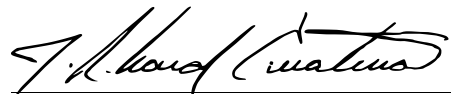
29, 2016] . . . .” (Dkt. 21, p. 2). However, plaintiff did not comply with this Order, and instead filed her motion for extension on June 30, 2016 (*see* Dkt. 22).

### CONCLUSION

Plaintiff failed to file her opening brief, failed to file a response to the motion to dismiss, and then failed to file a second request for continuance in a timely manner. Finally, as plaintiff has not availed herself of the opportunity to obtain an attorney in the generous amount of time already allowed, the Court recommends that plaintiff’s motion for continuance (Dkt. 22) be denied and that this matter be dismissed without prejudice for failure to prosecute and for failure to follow this Court’s orders.

Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of de novo review by the district judge. *See* 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **August 12, 2016**, as noted in the caption.

Dated this 20<sup>th</sup> day of July, 2016.



J. Richard Creatura  
United States Magistrate Judge